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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 SAN JOSE DIVISION

11
 12 CORINNE GONSALVES, individually and on
 behalf of others similarly situated,

13 Plaintiff,

14 v.

15
 16 BLOCK, INC., JACK DORSEY, and AMRITA
 AHUJA,

17 Defendants.

18 Case No. 5:25-cv-00642-NW

19 CLASS ACTION

**20 PLAINTIFF'S RESPONSE TO
 DEFENDANTS' REQUEST FOR
 JUDICIAL NOTICE**

21
 22 Hearing Date: November 5, 2025
 Time: 9:00 a.m.
 23 Courtroom: San Jose, Courtroom 3, 5th Floor
 Judge: Hon. Noël Wise

1 **I. INTRODUCTION**

2 In support of their Motion to Dismiss (“Motion”) Plaintiff’s Amended Consolidated Class Action
 3 Complaint (“Complaint”), Defendants cite 16 extrinsic sources and ask the Court to incorporate them by
 4 reference or take judicial notice of them. ECF 108-2 (Declaration of Brian M. Lutz) (“Lutz Declaration” or
 5 “Lutz Decl.”); ECF 108-19 (Request for Judicial Notice) (“RJN”). By and large, these sources are public
 6 securities filings cited in Plaintiff’s Complaint. Plaintiff does not oppose the Court taking judicial notice of,
 7 or incorporating by reference, the vast majority of the Exhibits, consistent with applicable law. Plaintiff
 8 does, however, oppose Defendants’ efforts to use these Exhibits to controvert Plaintiff’s well-pled
 9 allegations on the pleadings. Further, Plaintiff opposes the request for judicial notice to the extent
 10 Defendants seek to introduce three documents, not incorporated by reference into the Complaint, to assume
 11 the truth of the matters asserted therein.

12 **II. ARGUMENT**

13 **A. Incorporation by Reference**

14 Incorporation by reference is a “doctrine that treats certain documents as though they are part of the
 15 complaint itself.” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th Cir. 2018). A document
 16 may be incorporated by reference “if the plaintiff refers extensively to the document or the document forms
 17 the basis of the plaintiff’s claim.” *Id.* Although the court “may assume an incorporated document’s contents
 18 are true for purposes of a motion to dismiss under Rule 12(b)(6) . . . , it is improper to assume the truth of an
 19 incorporated document if such assumptions only serve to dispute facts stated in a well-pleaded complaint.”
 20 *Id.* at 1003 (internal quotation marks omitted). Even documents incorporated by reference cannot be used to
 21 “resolv[e] factual disputes at the pleading stage.” *Id.*

22 Exhibits A-D, F, H-L, and N-P to the Lutz Declaration are cited and relied on in the Complaint and
 23 therefore may be the proper subject of incorporation by reference, “subject to *Khoja*’s restrictions” on using
 24 these documents to dispute Plaintiff’s well-pled allegations. *In re Doximity, Inc. Sec. Litig.*, 2025 WL
 25 1449598, at *2 (N.D. Cal. May 13, 2025) (Wise, J.). Defendants’ use of these documents in their Motion
 26 runs afoul of the rules set forth in *Khoja*.

27 For example, Defendants err by improperly asking the Court to read “[t]he obvious implication” of
 28 Lutz Declaration Exhibit D—the transcript of Block’s August 5, 2020 earnings call—to controvert

1 allegations about statements Dorsey made during that call. ECF 108 (“Mot.”) at 13. Defendants also rely on
 2 the contents of Exhibit F, the October 11, 2020 *New York Times* article, to argue that “Block explicitly and
 3 repeatedly warned investors” of the possibility of fraud on Cash App. Mot. 10. These arguments are
 4 intended “to dispute facts” in Plaintiff’s Complaint, something Defendants cannot do at this stage in the
 5 case. *Khoja*, 899 F.3d at 1003.

6 **B. Judicial Notice**

7 “Judicial notice under [Federal Rule of Evidence] 201 permits a court to notice an adjudicative fact
 8 if it is ‘not subject to reasonable dispute.’” *Khoja*, 899 F.3d at 999 (quoting Fed. R. Evid. 201(b)). Although
 9 publicly available financial documents such as Securities and Exchange Commission (“SEC”) filings are
 10 subject to judicial notice, there are restrictions on how the court may use these documents on a motion to
 11 dismiss. *See Michel v. Sumo Logic, Inc.*, 779 F. Supp. 3d 1038, 1047 (N.D. Cal. 2025). Specifically, and
 12 crucially, “a court cannot take judicial notice of disputed facts contained in such public records.” *Doximity*,
 13 2025 WL 1449598, at *2; *see Khoja*, 899 F.3d at 1000 (stating that courts can only take judicial notice of
 14 facts that are “not subject to reasonable dispute”).

15 Defendants ask the Court to take judicial notice of three documents—Exhibits M, E, and G to the
 16 Lutz Declaration—that are not otherwise incorporated by reference into the Complaint. *See RJN* at 2–4.
 17 Plaintiff does not oppose the Court taking judicial notice of the existence of these documents. *See Khoja*,
 18 899 F.3d at 999–1000. But the Court should not consider the truth of the matters asserted therein, as
 19 Defendants would have it do.

20 First, Exhibit M contains excerpts from Block’s Form 10-Q for the quarter ending March 31, 2022.
 21 The Complaint does not reference this document, and Defendants do not argue otherwise. Nevertheless,
 22 Defendants rely on this SEC filing to argue “Block never said it was reporting unique individual users, and
 23 the Company was transparent that ‘active’ accounts could include ‘multiple accounts’ tied to a single
 24 customer.” Mot. 13 (quoting Ex. M at 7).

25 The meaning of Block’s definitions is vigorously disputed by the parties on the pleadings.
 26 Defendants improperly use this document to “attempt to characterize the facts at the pleadings stage and put
 27 facts in dispute.” *Doximity*, 2025 WL 1449598, at *2. As this Court explained in *Doximity*, defendants in
 28 securities fraud litigation cannot use judicial notice “to argue, at the pleadings stage, the facts relating to

1 what investors did (or not) understand.” *Id.* The Court must accept the allegations in Plaintiff’s Complaint as
2 true, and it cannot rely on Exhibit M to conclude otherwise.

3 Second, Exhibits E and G contain Forms 4 filed with the SEC reflecting Defendants Dorsey and
4 Ahuja’s transactions in Block, Inc. common stock during the Class Period. Lutz Decl. ¶¶ 6, 8. The Court can
5 take judicial notice of the fact that Dorsey and Ahuja filed these Forms 4. But it cannot “consider the truth
6 of the statements within the filings” or use them “to resolve any factual disputes.” *Das v. Unity Software*
7 *Inc.*, 2024 WL 1141733, at *7 (N.D. Cal. Mar. 15, 2024). To the extent Defendants request that the Court
8 draw inferences in their favor from information contained in Exhibits E and G to dispute the Complaint or
9 Plaintiff’s inference of scienter, that is improper and should be rejected. *See, e.g., In re Dexcom, Inc. Class*
10 *Action Sec. Litig.*, 2025 WL 2606620, at *6 (S.D. Cal. Sept. 9, 2025) (declining “to consider the truth of the
11 contents of [Forms 4] for the purpose of disputing Plaintiff’s scienter allegations”).

12 **III. CONCLUSION**

13 For the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendants’ request for
14 judicial notice with respect to Exhibits E, G, and M.

1 Date: September 15, 2025

Respectfully submitted,

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